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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**OUTERBRIDGE ACCESS
ASSOCIATION, SUING ON BEHALF
OF DIANE CROSS; and DIANE
CROSS, An Individual,**

Plaintiffs,

v.

**HOME DEPOT U.S.A., INC.
d.b.a. THE HOME DEPOT #6679;
MIRA MESA MARKETPLACE WEST,
LLC; AND DOES 1 THROUGH 10,
Inclusive,**

Defendants.

Case No. **08 CV 0046 JM JMA**

COMPLAINT

CLASS ACTION

**DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS**

**[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1,
54.3]**

DEMAND FOR JURY TRIAL

[F.R.Civ.P. rule 38(b)]

INTRODUCTION

1. Plaintiffs OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF
DIANE CROSS AND ITS MEMBERS; and DIANE CROSS, An Individual,
herein complain, by filing this Civil Complaint in accordance with
rule 8 of the Federal Rules of Civil Procedure in the Judicial
District of the United States District Court of the Southern

1 District of California, that Defendants have in the past, and
2 presently are, engaging in discriminatory practices against
3 individuals with disabilities, specifically including minorities
4 with disabilities. Plaintiffs allege this civil action and others
5 substantial similar thereto are necessary to compel access
6 compliance because empirical research on the effectiveness of
7 Title III of the Americans with Disabilities Act indicates this
8 Title has failed to achieve full and equal access simply by the
9 executive branch of the Federal Government funding and promoting
10 voluntary compliance efforts. Further, empirical research shows
11 when individuals with disabilities give actual notice of potential
12 access problems to places of public accommodation without a
13 federal civil rights action, the public accommodations do not
14 remove the access barriers. Therefore, Plaintiffs make the
15 following allegations in this federal civil rights action:

16 **JURISDICTION AND VENUE**

17 2. The federal jurisdiction of this action is based on the
18 Americans with Disabilities Act, 42 United States Code 12101-
19 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
20 District of the United States District Court of the Southern
21 District of California is in accordance with 28 U.S.C. § 1391(b)
22 because a substantial part of Plaintiffs' claims arose within the
23 Judicial District of the United States District Court of the
24 Southern District of California.

25 **SUPPLEMENTAL JURISDICTION**

26 3. The Judicial District of the United States District Court of
27 the Southern District of California has supplemental jurisdiction
28

1 over the state claims as alleged in this Complaint pursuant to 28
2 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper
3 in this action is because all the causes of action or claims
4 derived from federal law and those arising under state law, as
5 herein alleged, arose from common nucleus of operative facts. The
6 common nucleus of operative facts, include, but are not limited
7 to, the incidents where Plaintiffs were denied full and equal
8 access to Defendants' facilities, goods, and/or services in
9 violation of both federal and state laws when they attempted to
10 enter, use, and/or exit Defendants' facilities as described below
11 within this Complaint. Further, due to this denial of full and
12 equal access, OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF
13 DIANE CROSS and DIANE CROSS, An Individual, and other persons with
14 disabilities were injured. Based upon the said allegations, the
15 state actions, as stated herein, are so related to the federal
16 actions that they form part of the same case or controversy and
17 one would ordinarily expect the actions to be tried in one
18 judicial proceeding.

19 **NAMED DEFENDANTS AND NAMED PLAINTIFF**

20 4. Defendants are, and, at all times mentioned herein, were, a
21 business or corporation or franchise organized and existing and/or
22 doing business under the laws of the State of California.

23 Plaintiff is informed and believes and thereon alleges that
24 Defendant HOME DEPOT U.S.A., INC. is the owner, operator,
25 franchiser, licensor, and/or is doing business as THE HOME DEPOT
26 #6679. Defendant HOME DEPOT U.S.A., INC. d.b.a. THE HOME DEPOT
27 #6679 is located at 10604 Westview Parkway, Mira Mesa, California
28

1 92126, Assessor Parcel Number: 318-600-03. Plaintiff is informed
2 and believes and thereon alleges that Defendant MIRA MESA
3 MARKETPLACE WEST, LLC is the owner, operator, and/or lessor of the
4 real property located at 10604-10678 Westview Parkway, Mira Mesa,
5 California 92126, Assessor Parcel Number: 318-600-03. Defendant
6 MIRA MESA MARKETPLACE WEST, LLC is located at 101 North Westlake
7 Blvd., #201, Westlake Village, California 91362.

8 5. The words Plaintiff, Plaintiffs, Plaintiff's Member, and
9 Plaintiff's Members as used herein specifically include
10 OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF DIANE CROSS and
11 DIANE CROSS, An Individual.

12 6. Defendants Does 1 through 10, were at all times relevant
13 herein subsidiaries, employers, employees, agents, of HOME DEPOT
14 U.S.A., INC. d.b.a. THE HOME DEPOT #6679; and MIRA MESA
15 MARKETPLACE WEST, LLC. Plaintiffs are ignorant of the true names
16 and capacities of Defendants sued herein as Does 1 through 10,
17 inclusive, and therefore sue these Defendants by such fictitious
18 names. Plaintiffs will pray leave of the court to amend this
19 complaint to allege the true names and capacities of the Does when
20 ascertained.

21 7. Plaintiffs are informed and believe, and thereon allege, that
22 Defendants and each of them herein were, at all times relevant to
23 the action, the owner, lessor, lessee, franchiser, franchisee,
24 general partner, limited partner, agent, employee, representing
25 partner, or joint venturer of the remaining Defendants and were
26 acting within the course and scope of that relationship.

27 Plaintiffs are further informed and believe, and thereon allege,
28

1 that each of the Defendants herein gave consent to, ratified,
2 and/or authorized the acts alleged herein to each of the remaining
3 Defendants.

4 **STATEWIDE CLASS ACTION ALLEGATIONS UNDER FED.R.CIV.P. 23(b) AS TO**
5 **ALL DEFENDANTS**

6 8. Plaintiffs are members of a group within the State of
7 California composed of persons with a wide range of disabilities,
8 limited to persons who use wheelchairs for mobility, who must be
9 able to access retail merchandise establishments, like Defendants'
10 establishments located at 10604 Westview Parkway, Mira Mesa,
11 California 92126, Assessor Parcel Number: 318-600-03. Plaintiffs
12 are precluded from equal access to Defendants' establishments so
13 meaningfully because the establishments, and each of them, fail to
14 provide access for members of the disability community who use a
15 wheelchair for mobility to the service counters, cashier checkout
16 aisle, and women's restroom within the facility. The Supreme
17 Court of the United States has held as long as the class
18 representative provides adequate representation for the class'
19 interests, the court has the power to adjudicate the rights and
20 obligations of all class members - even those who would otherwise
21 be beyond the reach of its personal jurisdiction. Phillips
22 Petroleum Co. v. Shutts, 472 US 797 (1985). This case stands for
23 the proposition that minimum contacts are not required with
24 nonresident members of a plaintiff class because, "the burdens
25 placed by a State upon absent class action plaintiff are not of
26 the same order or magnitude as those it places on an absent
27 defendant." Id. Plaintiffs allege they will insure class members

1 shall receive adequate notice of the proceedings and the
2 opportunity to "opt out," if required

3 9. Defendants have conducted themselves such as to establish a
4 pattern and practice of architectural discrimination. Plaintiffs
5 allege that Defendants have control over each and every facility,
6 establishment, and/or business located within the property located
7 at 10604 Westview Parkway, Mira Mesa, California 92126, Assessor
8 Parcel Number: 318-600-03. Accordingly, Plaintiffs allege
9 Defendants are responsible for removing architectural barriers at
10 Defendants' facilities and the establishments/businesses contained
11 therein.

12 10. For the aforementioned reasons, Plaintiffs allege they are
13 proper class representatives for members of the disability
14 community who use a wheelchair for mobility because the members of
15 the disability community who use a wheelchair for mobility are so
16 numerous that joinder is impracticable due to the fact more than
17 one hundred (100) persons fall within the membership description.
18 Also, the questions of law or fact are so common because the
19 members of the disability community who use a wheelchair for
20 mobility are being denied their civil rights under federal and
21 state laws - that is, each member of the disability community who
22 use a wheelchair for mobility suffered substantially similar
23 violations relating to the service counters, cashier checkout
24 aisle, and women's restroom within the facility. Further, the
25 claims or defenses of the representative parties are typical -
26 Plaintiffs have the right to access facilities, establishments,
27 and businesses like those within the property located at 10604
28

1 Westview Parkway, Mira Mesa, California 92126, Assessor Parcel
2 Number: 318-600-03, and the businesses that are located thereon
3 for many reasons including without limitation the purchase of
4 retail merchandise. Defendants' facilities are open to the
5 general public and Plaintiffs have been denied access because of
6 violations, as outlined above and specifically addressed elsewhere
7 within this Civil Complaint.

8 11. Additionally, Plaintiffs, as the named representatives, will
9 fairly and adequately represent the interests of the class because
10 Plaintiffs and the members of the disability community in the
11 State of California who use a wheelchair for mobility have
12 suffered substantially similar violations. Finally, a pattern and
13 practice exists on the part of Defendants, and each of them, of
14 architectural discrimination at their public facilities located
15 within the State of California. On information and good faith
16 belief, Plaintiffs thereon allege that Defendants, prior to the
17 passing of the Americans With Disabilities Act in 1992, conceived,
18 commissioned, designed, and implemented among other things, a
19 design for their public facilities, including, but not limited to
20 the service counters, cashier checkout aisle, and women's restroom
21 within the facility which do not meet the minimal standards
22 outlined under the federal regulations known as the Americans With
23 Disabilities Act Accessibility Guidelines ("ADAAG") and state
24 regulations, also known as Title 24 of the California Building
25 Code, and to which non-compliant plan they continue to utilize to
26 the injury of the members of the class. For these reasons and the
27 facts as stated herein, Plaintiffs have the right to maintain this
28

1 statewide class action pursuant to Fed.R.Civ.P. Rule 23(b).

2 **CONCISE SET OF FACTS**

3 12. Plaintiff OUTERBRIDGE ACCESS ASSOCIATION is an organization
4 that advocates on the behalf of its members with disabilities when
5 their civil rights and liberties have been violated. Plaintiff's
6 member DIANE CROSS is a member of Plaintiff Organization and has
7 physical impairments and due to these physical impairments she has
8 learned to successfully operate a wheelchair. Further,
9 Plaintiff's Member and Plaintiff DIANE CROSS' said physical
10 impairments substantially limits one or more of the following
11 major life activities including but not limited to: walking.

12 13. On January 26, 2007, Plaintiff CROSS went to Defendants'
13 public accommodation facilities known as HOME DEPOT U.S.A., INC.
14 d.b.a. THE HOME DEPOT #6679, (hereinafter "THE HOME DEPOT #6679"),
15 located at 10604 Westview Parkway, Mira Mesa, California 92126,
16 Assessor Parcel Number: 318-600-03, to utilize their goods and/or
17 services accompanied by a friend. When Plaintiff CROSS patronized
18 Defendants' facilities, she was unable to use and/or had
19 difficulty using the public accommodations' facilities including
20 but not limited to the service counters, cashier checkout aisle,
21 and women's restroom facilities as said were not accessible
22 because they failed to comply with ADA Access Guidelines For
23 Buildings and Facilities (hereafter referred to as "ADAAG" and
24 codified in 28 C.F.R. Part 36, App. A) and/or California's Title
25 24 Building Code Requirements. Defendants failed to remove
26 barriers to equal access within their public accommodation
27 facilities known as THE HOME DEPOT #6679.

1 14. Plaintiff CROSS personally experienced difficulty with said
2 access barriers at THE HOME DEPOT #6679. The following examples of
3 known barriers to access are not an exhaustive list of the
4 barriers to access that exist at Defendants' facilities. For
5 example, the Special Service counter and the Contractor Service
6 counter fail to be accessible, as they are impermissibly high and
7 fail to provide disabled signage.

8 15. There fails to be any designated accessible checkout aisles
9 displaying the required signage.

10 16. The women's restroom fails to be accessible, as the entrance
11 door to the women's restroom requires an excessive amount of
12 pressure to operate. The soap dispensers within the women's
13 restroom fail to be accessible, as they are mounted too high. The
14 feminine product dispenser within the women's restroom fails to be
15 accessible, as a bench impermissibly blocks access to this
16 dispenser.

17 17. Plaintiffs can prove these barriers as Plaintiffs conducted a
18 preliminary survey of Defendants' facilities. Plaintiff
19 Association alleges that its visually and hearing impaired members
20 desire to go to Defendants' facility but cannot because of lack of
21 auxiliary aids. Plaintiffs specifically allege that Defendants
22 knew, to a substantial certainty, that the architectural barriers
23 precluded wheelchair access. First, Plaintiffs will prove that
24 Defendants had actual knowledge that the architectural barriers
25 precluded wheelchair access and that the noncompliance with ADAAG
26 as to accessible entrances was intentional. Second, due to the
27 abundance of ADA information and constant news covers of ADA
28

1 lawsuits, Defendants had actual knowledge of the ADA and decided
2 deliberately not to remove architectural barriers. Third,
3 Defendants have no plans to remodel. Fourth, Defendants had
4 actual knowledge of ADA given all the ADA public awareness
5 campaigns, the abundance of free ADA information and the media's
6 constant ADA coverage. Fifth, a human being acting for the
7 defendants made a conscious decision as to how to proceed given
8 the presence of the architectural barriers. Plaintiffs allege
9 any alternative methods preclude integration of wheelchair
10 patrons, as it requires them to use a second-class entrance.
11 Also, expert testimony will show the facility contained
12 inaccessible features. Plaintiffs allege businesses often state
13 that they have few customers with disabilities. Plaintiffs allege
14 such customers avoid patronizing inaccessible business and are
15 deterred from patronizing such businesses.

16 18. Plaintiff's Member and Plaintiff DIANE CROSS intends to
17 return to Defendants' public accommodation facilities in the
18 immediate future. Plaintiffs' Member and Plaintiff DIANE CROSS is
19 presently deterred from returning due to her knowledge of the
20 barriers to access that exist at Defendants' facilities.

21 19. Pursuant to federal and state law, Defendants are required to
22 remove barriers to their existing facilities. Further, Defendants
23 had actual knowledge of their barrier removal duties under the
24 Americans with Disabilities Act and the Civil Code before January
25 26, 1992. Also, Defendants should have known that individuals
26 with disabilities are not required to give notice to a
27 governmental agency before filing suit alleging Defendants failed
28

1 to remove architectural barriers.

2 20. Based on these facts, Plaintiffs allege they were
3 discriminated against each time they patronized Defendants'
4 facilities. Plaintiff's Member and Plaintiff DIANE CROSS was
5 extremely upset due to Defendants' conduct.

6 **NOTICE**

7 21. Plaintiffs are not required to provide notice to the
8 defendants prior to filing a complaint. Skaiff v Meridien N. Am.
9 Beverly Hills, LLC, 506 F.3d 832 (9th Cir. 2007), see also Botosan
10 v. Paul McNally Realty, 216 F.3d 827, 832 (9th Cir 2000).

11 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

12 22. HOME DEPOT U.S.A., INC. d.b.a. THE HOME DEPOT #6679; MIRA
13 MESA MARKETPLACE WEST, LLC; and Does 1 through 10 will be referred
14 to collectively hereinafter as "Defendants."

15 23. Plaintiffs aver that the Defendants are liable for the
16 following claims as alleged below:

17 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

18 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- **Claims Under The**
19 **Americans With Disabilities Act Of 1990**

20 CLAIM I AGAINST ALL DEFENDANTS: **Denial Of Full And Equal Access**

21 24. Based on the facts plead at ¶¶ 12 - 20 above and elsewhere in
22 this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was
23 denied full and equal access to Defendants' goods, services,
24 facilities, privileges, advantages, or accommodations. Plaintiffs
25 allege Defendants are a public accommodation owned, leased and/or
26 operated by Defendants. Defendants' existing facilities and/or
27
28

1 services failed to provide full and equal access to Defendants'
2 facility as required by 42 U.S.C. § 12182(a). Thus, Plaintiff's
3 Member and Plaintiff DIANE CROSS was subjected to discrimination
4 in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42
5 U.S.C. § 12188 because Plaintiff's Member and Plaintiff DIANE
6 CROSS was denied equal access to Defendants' existing facilities.
7 25. Plaintiff's Member and Plaintiff DIANE CROSS has physical
8 impairments as alleged in ¶ 12 above because her conditions affect
9 one or more of the following body systems: neurological,
10 musculoskeletal, special sense organs, and/or cardiovascular.
11 Further, Plaintiff's Member and Plaintiff DIANE CROSS' said
12 physical impairments substantially limits one or more of the
13 following major life activities: walking. In addition,
14 Plaintiff's Member and Plaintiff DIANE CROSS cannot perform one or
15 more of the said major life activities in the manner, speed, and
16 duration when compared to the average person. Moreover,
17 Plaintiff's Member and Plaintiff DIANE CROSS has a history of or
18 has been classified as having a physical impairment as required by
19 42 U.S.C. § 12102(2)(A).
20

21 CLAIM II AGAINST ALL DEFENDANTS: **Failure To Make Alterations In**
22 **Such A Manner That The Altered Portions Of The Facility Are**
23 **Readily Accessible And Usable By Individuals With Disabilities**

24 26. Based on the facts plead at ¶¶ 12 - 20 above and elsewhere in
25 this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was
26 denied full and equal access to Defendants' goods, services,
27 facilities, privileges, advantages, or accommodations within a
28

1 public accommodation owned, leased, and/or operated by Defendants.
2 Defendants altered their facility in a manner that affects or
3 could affect the usability of the facility or a part of the
4 facility after January 26, 1992. In performing the alteration,
5 Defendants failed to make the alteration in such a manner that, to
6 the maximum extent feasible, the altered portions of the facility
7 are readily accessible to and usable by individuals with
8 disabilities, including individuals who use wheelchairs, in
9 violation of 42 U.S.C. §12183(a)(2).

10 27. Additionally, the Defendants undertook an alteration that
11 affects or could affect the usability of or access to an area of
12 the facility containing a primary function after January 26, 1992.
13 Defendants further failed to make the alterations in such a manner
14 that, to the maximum extent feasible, are readily accessible to
15 and usable by individuals with disabilities in violation 42 U.S.C.
16 §12183(a)(2).

17 28. Pursuant to 42 U.S.C. §12183(a), this failure to make the
18 alterations in a manner that, to the maximum extent feasible, are
19 readily accessible to and usable by individuals with disabilities
20 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
21 Therefore, Defendants discriminated against Plaintiffs in
22 violation of 42 U.S.C. § 12182(a).

23 29. Thus, Plaintiff's Member and Plaintiff DIANE CROSS was
24 subjected to discrimination in violation of 42 U.S.C. § 12183(a),
25 42 U.S.C. §12182(a) and 42 U.S.C. §12188 because Plaintiff's
26 Member and Plaintiff DIANE CROSS was denied equal access to
27 Defendants' existing facilities.
28

CLAIM III AGAINST ALL DEFENDANTS: **Failure To Remove Architectural Barriers**

30. Based on the facts plead at ¶¶ 12 - 20 above and elsewhere in this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased, and/or operated by Defendants.

Defendants failed to remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs are informed, believe, and thus allege that architectural barriers which are structural in nature exist within the physical elements of Defendants' facilities. Title III requires places of public accommodation to remove architectural barriers that are structural in nature to existing facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).] Failure to remove such barriers and disparate treatment against a person who has a known association with a person with a disability are forms of discrimination. [See 42 United States Code 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member and Plaintiff DIANE CROSS was subjected to discrimination in violation of 42 United States Code 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because they were denied equal access to Defendants' existing facilities.

CLAIM IV AGAINST ALL DEFENDANTS: **Failure To Modify Practices, Policies And Procedures**

31. Based on the facts plead at ¶¶ 12 - 20 above and elsewhere in this complaint, Defendants failed and refused to provide a

1 reasonable alternative by modifying its practices, policies and
2 procedures in that they failed to have a scheme, plan, or design
3 to assist Plaintiffs and/or others similarly situated in entering
4 and utilizing Defendants' services, as required by 42 U.S.C. §
5 12188(a). Thus, Plaintiff's Member and Plaintiff DIANE CROSS was
6 subjected to discrimination in violation of 42 United States Code
7 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
8 Member and Plaintiff DIANE CROSS was denied equal access to
9 Defendants' existing facilities.

10 32. Based on the facts plead at ¶¶ 12 - 20 above, Claims I, II,
11 and III of Plaintiff's First Cause Of Action above, and the facts
12 elsewhere herein this complaint, Plaintiffs will suffer
13 irreparable harm unless Defendants are ordered to remove
14 architectural, non-architectural, and communication barriers at
15 Defendants' public accommodation. Plaintiffs allege that
16 Defendants' discriminatory conduct is capable of repetition, and
17 this discriminatory repetition adversely impacts Plaintiffs and a
18 substantial segment of the disability community. Plaintiffs
19 allege there is a national public interest in requiring
20 accessibility in places of public accommodation. Plaintiffs have
21 no adequate remedy at law to redress the discriminatory conduct of
22 Defendants. Plaintiffs desire to return to Defendants' places of
23 business in the immediate future. Accordingly, the Plaintiffs
24 allege that a structural or mandatory injunction is necessary to
25 enjoin compliance with federal civil rights laws enacted for the
26 benefit of individuals with disabilities.

27 33. WHEREFORE, Plaintiffs pray for judgment and relief as
28

hereinafter set forth.

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - **CLAIMS UNDER**
CALIFORNIA ACCESSIBILITY LAWS

CLAIM I: **Denial Of Full And Equal Access**

34. Based on the facts plead at ¶¶ 12 - 20 above and elsewhere in this complaint, Plaintiff's Member and Plaintiff DIANE CROSS was denied full and equal access to Defendants' goods, services, facilities, privileges, advantages, or accommodations within a public accommodation owned, leased, and/or operated by Defendants as required by Civil Code Sections 54 and 54.1. Defendants' facility violated California's Title 24 Accessible Building Code by failing to provide access to Defendants' facilities.

35. These violations denied Plaintiff's Member and Plaintiff DIANE CROSS full and equal access to Defendants' facility. Thus, Plaintiff's Member and Plaintiff DIANE CROSS was subjected to discrimination pursuant to Civil Code §§ 51, 52, and 54.1 because Plaintiff's Member and Plaintiff DIANE CROSS was denied full, equal and safe access to Defendants' facility, causing severe emotional distress.

CLAIM II: **Failure To Modify Practices, Policies And Procedures**

36. Based on the facts plead at ¶¶ 12 - 20 above and elsewhere herein this complaint, Defendants failed and refused to provide a reasonable alternative by modifying its practices, policies, and procedures in that they failed to have a scheme, plan, or design to assist Plaintiffs and/or others similarly situated in entering

1 and utilizing Defendants' services as required by Civil Code §
2 54.1. Thus, Plaintiff's Member and Plaintiff DIANE CROSS was
3 subjected to discrimination in violation of Civil Code § 54.1.

4 CLAIM III: **Violation Of The Unruh Act**

5 37. Based on the facts plead at ¶¶ 12 - 20 above and elsewhere
6 herein this complaint and because Defendants violated the Civil
7 Code § 51 by failing to comply with 42 United States Code §
8 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
9 continue to discriminate against Plaintiffs and persons similarly
10 situated in violation of Civil Code §§ 51, 52, and 54.1.

11 38. Based on the facts plead at ¶¶ 12 - 20 above, Claims I, II,
12 and III of Plaintiffs' Second Cause Of Action above, and the facts
13 elsewhere herein this complaint, Plaintiffs will suffer
14 irreparable harm unless Defendants are ordered to remove
15 architectural, non-architectural, and communication barriers at
16 Defendants' public accommodation. Plaintiffs allege that
17 Defendants' discriminatory conduct is capable of repetition, and
18 this discriminatory repetition adversely impacts Plaintiffs and a
19 substantial segment of the disability community. Plaintiffs
20 allege there is a state and national public interest in requiring
21 accessibility in places of public accommodation. Plaintiffs have
22 no adequate remedy at law to redress the discriminatory conduct of
23 Defendants. Plaintiffs desire to return to Defendants' places of
24 business in the immediate future. Accordingly, the Plaintiffs
25 allege that a structural or mandatory injunction is necessary to
26 enjoin compliance with state civil rights laws enacted for the
27 benefit of individuals with disabilities.

1 39. Wherefore, Plaintiffs pray for damages and relief as
2 hereinafter stated.

3
4 **Treble Damages Pursuant To Claims I, II, III Under The California**
5 **Accessibility Laws**

6 40. Defendants, each of them respectively, at times prior to and
7 including, the month of January of 2007, and continuing to the
8 present time, knew that persons with physical disabilities were
9 denied their rights of equal access to all portions of this public
10 facility. Despite such knowledge, Defendants, and each of them,
11 failed and refused to take steps to comply with the applicable
12 access statutes; and despite knowledge of the resulting problems
13 and denial of civil rights thereby suffered by Plaintiffs and
14 other similarly situated persons with disabilities. Defendants,
15 and each of them, have failed and refused to take action to grant
16 full and equal access to persons with physical disabilities in the
17 respects complained of hereinabove. Defendants, and each of them,
18 have carried out a course of conduct of refusing to respond to, or
19 correct complaints about, denial of disabled access and have
20 refused to comply with their legal obligations to make Defendants'
21 public accommodation facilities accessible pursuant to the
22 Americans With Disability Act Access Guidelines (ADAAG) and Title
23 24 of the California Code of Regulations (also known as the
24 California Building Code). Such actions and continuing course of
25 conduct by Defendants, and each of them, evidence despicable
26 conduct in conscious disregard of the rights and/or safety of
27 Plaintiffs and of other similarly situated persons, justifying an
28

1 award of treble damages pursuant to sections 52(a) and 54.3(a) of
2 the California Civil Code.

3 41. Defendants, and each of their actions have also been
4 oppressive to persons with physical disabilities and of other
5 members of the public, and have evidenced actual or implied
6 malicious intent toward those members of the public, such as
7 Plaintiffs and other persons with physical disabilities who have
8 been denied the proper access to which they are entitled by law.
9 Further, Defendants, and each of their, refusals on a day-to-day
10 basis to correct these problems evidence despicable conduct in
11 conscious disregard for the rights of Plaintiffs and other members
12 of the public with physical disabilities.

13 42. Plaintiffs pray for an award of treble damages against
14 Defendants, and each of them, pursuant to California Civil Code
15 sections 52(a) and 54.3(a), in an amount sufficient to make a more
16 profound example of Defendants and encourage owners,
17 lessors/lessees, and operators of other public facilities from
18 willful disregard of the rights of persons with disabilities.
19 Plaintiffs do not know the financial worth of Defendants, or the
20 amount of damages sufficient to accomplish the public purposes of
21 section 52(a) of the California Civil Code and section 54.3 of the
22 California Civil Code.

23 43. Wherefore, Plaintiffs pray for damages and relief as
24 hereinafter stated.

25
26 **DEMAND FOR JUDGMENT FOR RELIEF:**

27 A. For general damages pursuant to Cal. Civil Code §§ 52 or
28

1 54.3;

2 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
3 each and every offense of Civil Code § 51, Title 24 of the
4 California Building Code, ADA, and ADA Accessibility Guidelines;

5 C. In the alternative to the damages pursuant to Cal. Civil Code
6 § 52 in Paragraph B above, for \$1,000 in damages pursuant to Cal.
7 Civil Code § 54.3 for each and every offense of Civil Code § 54.1,
8 Title 24 of the California Building Code, ADA, and ADA
9 Accessibility Guidelines;

10 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
11 Plaintiffs request this Court enjoin Defendants to remove all
12 architectural barriers in, at, or on their facilities;

13 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. §
14 12205, and Cal. Code of Civil Procedure §§ 1032 and 1033.5;

15 F. For treble damages pursuant to Cal. Civil Code §§ 52(a) or
16 54.3(a);

17 G. A Jury Trial and;

18 H. For such other further relief as the court deems proper.

19
20 Respectfully submitted:

PINNOCK & WAKEFIELD, A.P.C.

21
22 Dated: January 8, 2008

23 By: 

THEODORE A. PINNOCK, ESQ.

24 DAVID C. WAKEFIELD, ESQ.

25 MICHELLE L. WAKEFIELD, ESQ.

26 Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

OUTERBRIDGE ACCESS ASSOCIATION, SUING ON BEHALF OF
DIANE CROSS; and DIANE CROSS, An Individual,
Plaintiffs,

DEFENDANTS

HOME DEPOT U.S.A., INC. d.b.a. THE HOME DEPOT #6679;
MIRA MESA MARKETPLACE WEST, LLC; AND DOES 1 THROUGH
10, Inclusive

FILED

08 JAN -8 PM 2:16

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED
PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

San Diego

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Michelle L. Wakefield, Esq. SBN: 200424
Theodore A. Pinnock, Esq. SBN: 153434
PINNOCK & WAKEFIELD, A.P.C.
3033 Fifth Ave., Suite 410, San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

'08 CV 0046 JM JMA

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in
Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX

(For Diversity Cases Only)

FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

- | | | |
|--|--|---|
| | PT DEF | PT DEF |
| Citizen of This State | <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business
in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business
in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign
Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury- Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization. Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice: <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from ☐ 3 Remanded from Appellate ☐ 4 Reinstated or ☐ 5 Transferred from ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from
State Court Court Reopened another district (specify) Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION
UNDER f.r.c.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in
complaint:

JURY DEMAND: ☒ YES ☐ NO

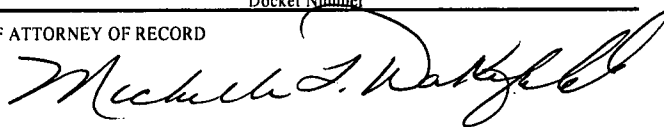
VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE January 8, 2008

SIGNATURE OF ATTORNEY OF RECORD

PA-117335C 1/8/08 BL KLP#146224



**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

146224 - BH

**January 08, 2008
14:16:19**

Civ Fil Non-Pris

USAO #.: 08CV0046 CIVIL FILING

Judge...: JEFFREY T MILLER

Amount.: \$350.00 CC

Total-> \$350.00

FROM: OUTERBRIDGE V. HOME DEPOT ET A
CIVIL FILING
VISA AUTH#014125